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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120403254-2255-01]

RIN 0648-XB045

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement the annual catch limit (ACL), harvest guideline (HG), annual catch target (ACT) and associated annual reference points for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2011, through June 30, 2012. This rule is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2011/2012 ACL or maximum HG for Pacific mackerel is 40,514 metric tons (mt). The proposed ACT, which will be the directed fishing harvest target, is 30,386 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the ACL and ACT (10,128 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. This rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Comments must be received by [insert date 16 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document identified by NOAA-NMFS-2012-0072 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0072 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562) 980-4047

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the report “Pacific Mackerel (Scomber japonicus) Stock Assessment for USA Management in the 2011-12 Fishing Year” and the Environmental Assessment /Regulatory Impact Review for this action may be obtained from the Southwest Regional Office (see ADDRESSES).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL) and available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG) and/or annual catch target (ACT) recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

This proposed rule would implement the 2011/2012 ACL, HG, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass, for Pacific mackerel in the U.S. EEZ off the Pacific coast. (The EEZ off the Pacific Coast encompasses ocean waters seaward of the outer boundary of state waters, which is 3 nautical miles off the coast, out to a line 200 nautical miles from the coast.) The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the

annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the CPS FMP is  $HG = [(Biomass - Cutoff) * Fraction * Distribution]$  with the parameters described as follows:

1. Biomass. The estimated stock biomass of Pacific mackerel age for the 2011/2012 management season is 211,126 mt.

2. Cutoff. This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.

3. Fraction. The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.

4. Distribution. The average portion (currently 70%) of the total Pacific mackerel biomass that is estimated to be in the U.S. EEZ off the Pacific coast, based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2011 Council meeting, the Council adopted the 2011-12 Pacific mackerel assessment and a Pacific mackerel biomass estimate of 211,126 metric tons (mt). Based on recommendations from its SSC and other advisory bodies, the Council recommended and NOAA Fisheries (NMFS) is proposing, an OFL of 44,336 mt, an ABC of 42,375 mt, an ACL and maximum harvest guideline (HG) of 40,514 mt, and an ACT of 30,386 mt for the 2011/2012 Pacific mackerel fishing year. These catch specifications are based on the most recent stock assessment and the control rules established in the CPS FMP.

If the ACT is attained, the directed fishery will close, and the difference between the ACL and ACT (10,128 mt) will be reserved as a set aside for incidental landings in other CPS fisheries and other sources of mortality. In that event, for the remainder of the fishing year, incidental harvest measures will be in place, including a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45% by weight of the CPS landed per trip may be Pacific mackerel), except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. Upon the fishery attaining the ACL/HG (40,514 mt), no vessels in CPS fisheries may retain Pacific mackerel. The purpose of the incidental set-aside and allowance of an incidental fishery is to allow for the restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries.

The NMFS Southwest Regional Administrator will publish a notice in the Federal Register announcing the date of any closure to either directed or incidental fishing.

Detailed information on the fishery and the stock assessment are found in the report “Pacific Mackerel (Scomber japonicus) Stock Assessment for USA Management in the 2011-12 Fishing Year” (see ADDRESSES).

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the reasons as follows:

The purpose of this proposed rule is to implement the 2011/2012 annual specifications for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and HG or ACT for the Pacific mackerel fishery based on the harvest control rules in the FMP. The specific harvest control rule is applied to the current stock biomass estimate to derive the annual HG, which is used to manage the commercial take of Pacific mackerel.

The U.S. Small Business Administration defines small businesses engaged in fishing as those vessels with annual revenues of or below \$4 million. The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finfish fleet. Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast, which primarily includes the fisheries for Pacific sardine, northern anchovy and market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 degrees N. latitude; Point Arena, California) of the fishery. Sixty-four vessels are currently permitted in the Federal CPS limited entry fishery off California. The average annual per vessel revenue in 2010 for the West Coast CPS finfish fleet was well below \$4 million; therefore, all of these vessels therefore are considered small

businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner. Accordingly, there would be no economic impacts resulting from disproportionality between small and large business entities under the proposed action.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific mackerel ex-vessel price per mt. NMFS used average Pacific mackerel ex-vessel price per metric ton (mt) to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was limited or unavailable.

For the 2010/2011 fishing year the HG was 11,000 metric tons (mt) and was divided into a directed fishery of 8,000 mt and an incidental fishery of 3,000 mt. Approximately 2,100 mt of this HG was harvested in 2010/2011 fishing season with an estimated ex-vessel value of \$414,256 mt. Using these figures, the average 2010/2011 ex-vessel price per mt of Pacific mackerel was approximately \$200.

The proposed ACL/HG for the 2011/2012 Pacific mackerel fishing season is 40,514 mt, with a directed fishing harvest target or ACT of 30,386 mt. This season's directed fishing target is more than 3 times higher than that of the previous year. If the fleet were to take the entire 2011/2012 ACT, and assuming a coastwide average ex-vessel price per mt of \$206 (average of 2009 and 2010 ex-vessel), the potential revenue to the fleet would be approximately \$6.3 million. However, this result will depend greatly on market forces within the fishery, and on the regional availability of the resource to the fleet and the fleets' ability to find schools of Pacific mackerel.

Over recent years, the profitability from fishing Pacific mackerel has depended less on the catch level, and more on market forces within the fishery as well as the other CPS fisheries, and on the regional availability of the species to the fleet and the fleets' ability to easily find schools relatively close to port. If there is no change in market conditions (i.e., an increase demand for Pacific mackerel product) or proximity of the fish to the fleet, it is not likely that the full ACT will be taken during the 2011-2012 fishing year, in which case profits will be lower than if the entire ACT were taken. The annual average U.S. Pacific mackerel harvest from 2001 to 2010 is approximately 4,500 mt, and over the last 10 years landings have averaged approximately 6,000 mt without exceeding 10,000 mt. As a result, it is unlikely that the ACT proposed in this rule will limit the potential profitability of the fleet from Pacific mackerel.

However, the revenue derived from harvesting Pacific mackerel is only one factor determining the overall revenue for a majority of the vessels in the CPS fleet, and, therefore, the economic impact to the fleet from the proposed action cannot be viewed in isolation. CPS vessels typically harvest a number of other species, including Pacific sardine, market squid, northern anchovy, and tuna, but focus on Pacific sardine, which had an estimated ex-vessel of \$12.5 million in 2010, and market squid, which had an estimated ex-vessel of \$71 million in 2010. Therefore, Pacific mackerel is only a small component of this multi-species CPS fishery and with the incidental catch provisions in this rule, the fleet will continue to be able to catch these other profitable species if the ACT is reached and directed mackerel fishing is closed.

Based on the disproportionality and profitability analysis above, this rule, if adopted, will not have a significant economic impact on a substantial number of these small entities.



As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

Authority: 16 U.S.C. 1801 et seq.

Dated: April 6, 2012

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Alan D. Risenhoover,  
Acting Deputy Assistant Administrator  
For Regulatory Programs,  
National Marine Fisheries Service.

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